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Before the **DOCKET FILE COPY ORIGINAL**
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 11 1997

In the Matter of)

Implementation of Section 9)
of the Communications Act)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1997)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MD Docket No. 96-186

PETITION FOR RECONSIDERATION
and
COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Pursuant to 47 C.F.R. § 1.429(a), Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits its *Petition for Reconsideration* of the Commission's *Order* in the above-captioned proceeding.^{1/} By releasing this order with virtually no notice, by increasing regulatory fees by over 40 percent on CMRS licensees, and by imposing fees that are not competitively neutral, the Commission fails to faithfully carry out its duty to adapt its policies to account for competitive differentiation among markets. In a competitive marketplace, as wireless has become, a government agency cannot unilaterally raise fees on companies with

^{1/} As a cellular and PCS licensee, Comcast is an interested party in this proceeding within the meaning of 47 C.F.R. § 1.429(a). See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, MD Docket No. 96-186, FCC 97-215 (released June 26, 1997) (the "*Order*"). The *Order* appeared in the *Federal Register* on July 11, 1997.

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virtually no notice without creating market distortions. The Commission must reconsider the *Order*, and adopt a competitively neutral regulatory fee schedule for CMRS for fiscal year 1997.

Comcast also, in this joint filing, submits its comments on the closely related *Further Notice* in the same docket.^{2/} Comcast strongly objects to the Commission's proposal annually to publish in the *Federal Register* lists of those commercial firms and businesses have paid a regulatory fee for the preceding fiscal year.^{3/} Publication of such a list would divulge competitively-sensitive market information, information that should not be made public at the discretion of a government agency. This suggestion evidences the same lack of consideration for competition as is shown by the *Order*.

I. FEE INCREASES OF THIS MAGNITUDE ON SUCH SHORT NOTICE ARE INAPPROPRIATE WITH RESPECT TO COMPETITIVE BUSINESSES, AND ARE INDICATIVE OF A MONOPOLY-REGULATORY MIND SET.

Most businesses operate on a January 1 - December 31 fiscal year. Businesses set their budgets prior to January 1, and follow their business plans accordingly. While all entities in regulated industries know that regulatory change is possible, regulators of competitive markets should exercise their powers in such a manner so as not to unduly interfere with set business plans or the competitive markets themselves. The 40 percent regulatory fee increase on CMRS imposed by the *Order*, issued mid-year through virtually every company's budget cycle,

^{2/} See *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Further Notice of Proposed Rulemaking, MD Docket No. 96-186, FCC 97-254 (released July 18, 1997) (the "*Further Notice*"). The *Further Notice* was published in the *Federal Register* on July 25, 1997, and has a comment date of August 14, 1997.

^{3/} *Further Notice* at ¶ 6.

evidences an absolute disregard for the businesses that comprise the distinct *competitive* wireless telecommunications marketplace. CMRS businesses must now, on two month's notice, come up with far more cash than expected to pay their fees. Carefully prepared business plans can fall apart in the face of such a short-fused action, leaving companies to scramble to meet new obligations. The Commission cannot be indifferent to the need for businesses to plan and budget.^{4/}

In addition to the budgetary and planning problems which these types of short-noticed impositions can create, market distortions are the inevitable result of fees being imposed on CMRS providers. For example, here, new market entrants with few customers as of December 31, 1996, will pay low regulatory fees, and large, nationwide carriers with huge customer bases will have vast business structures over which to spread the costs. It will be the mid-sized, regional companies such as Comcast that will feel the market distortion caused by this type of action because such carriers are unable to raise prices to customers in a competitive market, yet do not have the vast customer base or infrastructure needed to absorb large extra costs without substantial impact on the bottom line.

^{4/} Indeed, the Commission limited fee increases for some categories of fee payers, saying that "[t]o do otherwise would subject several entities to unexpected major increases which would severely impact the economic well being of certain licensees who will not be able to adjust their business plans accordingly." *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Notice of Proposed Rulemaking, MD Docket No. 96-186, FCC 97-215 (released March 5, 1997) (the "Notice") at ¶ 18. *See also Order* at ¶ 37. Perhaps the Commission mistakenly views the wireless industry as an unlimited pot — the proverbial golden goose — rather than as an increasingly competitive and active participant in the telecommunications marketplace. Comcast asserts that a 40 percent fee increase is an "unexpected major increase" that can "severely impact the economic well being of certain licensees."

These concerns extend not only to the regulatory fees at issue in this docket, but also to the looming (and potentially immense) surcharges for universal service,^{5/} the imposition of huge costs associated with number portability^{6/} and assorted other government mandates that adversely affect competitive segments of the telecommunications market, and disproportionately various classes of competitors within those segments. The Commission must fundamentally revise its analysis in order to evaluate the impact of their proposed impositions on carriers in competitive markets, and consider the need for carriers to plan for such impositions and address the same through their pricing structures. Mid-way through a fiscal year, no such planning can take place. Even where sufficient advance notice is given, carriers must either absorb the costs, thus forcing decreased spending on other facets of their businesses (such as much-needed network expansion), or pass on increases to future customers. Neither alternative is viable or attractive in a competitive marketplace. Indeed, it is doubtful whether companies such as Comcast can pass on regulatory cost increases to any customers when those customers can obtain service from new market entrants that do not currently face the fees, or from larger carriers who can better absorb the costs.^{7/}

^{5/} See In the Matter of Federal-State Joint Board on Universal Service. Report and Order, CC Docket No. 96-45 (released May 8, 1997). The Report and Order appeared in the Federal Register June 17, 1997 (62 FR 32862).

^{6/} See In the Matter of Telephone Number Portability; First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116; 11 FCC Rcd. 8352 (1996).

^{7/} As discussed above, new entrants into the wireless market have low base assessments under the Commission's FY 1997 regulatory fee structure. Additionally, as Comcast begins to position its wireless services as alternatives to the landline network, it will face competition from landline competitors that are charged regulatory fees on an entirely different scale. The fee disparities between new entrants and incumbents and between different types of fee payers will create a competitive imbalance that the Commission must consider and address.

The last-minute imposition of huge increases in regulatory fees is indicative of a regulatory mind set appropriate for use with monopolies (who have guaranteed rates of return, and who demand and receive massive subsidies at the expense of others), and not with respect to a competitive industry. Under competition companies cannot just pass through unexpected increases in regulatory costs to customers and then seek and obtain relief by demanding that regulators squeeze subsidies out of others. The Commission, however, apparently fails to appreciate this fact. No attempt was made either to give businesses adequate notice of regulatory fee increases for planning purposes or to ensure that regulatory fees would be imposed in a competitively neutral manner. If the Commission truly wants to encourage competition it recognize that its actions have competitive ramifications and can distort markets.

To avoid these market distortions, the Commission must first assess the impact of any proposed imposition on each telecommunications market and industry segment separately. The Commission's most recent actions suggest a desire to reach goals — whether for an aggregate universal service figure, total regulatory fee cache or "number portability" scheme — without much consideration for the impact of such demands on existing business. The Commission can no longer view all industry segments from the vantage point of one — the wireline monopoly. The Wireless Telecommunications Bureau has a separate, distinct constituency which also must be considered and addressed in Commission decisions implementing "common carrier" policies. Policies which may be appropriate for monopoly LECs or large IXC's may require modifications for CMRS carriers whose markets are currently more competitive and are becoming increasingly competitive, whose markets are less well penetrated and are therefore in a radically different phase of development (whether in terms of revenue, price or network capacity), and who are

technologically and jurisdictionally different from all others. And as part of its analysis of competitive impact, it must give businesses sufficient notice of future regulatory changes and must attempt to implement those regulatory changes in a competitively neutral manner as required by each separate industry segment.

For the regulatory fees already adopted for FY 1997, Comcast urges the Commission to recognize that a tax is a tax, and that as a tax, regulatory fees should be disclosed and collected in an equal manner. Comcast therefore proposes that the Commission require CMRS carriers to collect an explicit monthly fee from all current subscribers of \$0.02. This kind of collection mechanism would be competitively neutral because *all* CMRS customers would face the same fee in a one-time pass through, regardless of carrier, and consequently no carrier would be favored over another. The Commission must give businesses adequate notice of large fee increases, and therefore should cap regulatory fee increases at the amount of the regulatory fee increase demanded by Congress, taking into account industry growth. Further, for future years, the Commission should announce regulatory fees in the Fall *preceding* the year in which they are to be collected, so that businesses can formulate their business plans.

II. THE COMMISSION'S REGULATORY FEE METHODOLOGY IS FLAWED AND MUST BE RECONSIDERED.

Section 9(b)(1)(A) of the Communications Act of 1934, as amended, states that when the Commission establishes its annual regulatory fees, it is to "take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities . . . [as well as] other factors that the Commission determines are necessary in the public

interest."^{8/} As discussed above, the Commission's 1997 regulatory fee schedule is not in the public interest because it will create market distortions, and therefore must be changed on reconsideration. Additionally, as other parties have already pointed out, the methodology used to derive the fees is flawed in many respects.

First, as PCIA observed, Congress has substantially deregulated the CMRS industry and the Commission's regulatory fee schedule should reflect this fact.^{9/} The statement in the *Order* that fee payers must help to cover costs incurred by entities exempt from paying fees does not address the fact that CMRS fees increased substantially more between 1996 and 1997 than fees for other types of services while, at the same time, the CMRS industry has purportedly been deregulated.^{10/} Second, as several parties noted, the Commission has failed to provide sufficient information about its cost accounting system and the manner in which costs are allocated to particular fee categories to allow interested parties to make an informed evaluation of the fee schedule.^{11/} For example, have CMRS providers been charged with costs related to the Commission's 1996 spectrum auction work, work that would have been done by Wireless

^{8/} 47 U.S.C. § 159(a)(1).

^{9/} PCIA Comments at 9.

^{10/} "Thus, in direct response to PCIA, . . . a particular fee and resulting revenue collection will invariably exceed the service's direct regulatory costs because the revenue requirement for any of our services, and thus the fees assessed upon fee payers in those services, will be higher than their actual cost of service, notwithstanding that actions by Congress and the Commission to deregulate would appear to warrant a lower fee." *Order* at ¶ 23.

^{11/} See, e.g., Comsat Corporation Comments at 9-10; GE American Communications, Inc. Comments at 3; PCIA Comments at 5-6; PCIA Reply Comments at 2-4.

Telecommunications Bureau staffers?^{12/} And how much of the work associated with the Universal Service and Number Portability rulemakings — in which CMRS interests and issues were overwhelmingly ignored in order to establish "one size fits all" approaches — was allocated to wireless? While the Commission declares it is "satisfied" that the *Notice* "sufficiently described our cost accounting system. . . ,"^{13/} that is an insufficient legal basis on which to support the regulatory fee methodology.

III. COMMISSION CONVENIENCE IS AN INSUFFICIENT BASIS ON WHICH TO ADOPT A PROPOSAL THAT COULD DAMAGE COMPETITION.

In the *Further Notice* the Commission proposes to publish annually in the *Federal Register* lists of those commercial entities and businesses that have paid a regulatory fee for the preceding fiscal year.^{14/} The reason given for adoption of this proposal is so that fee payers can verify that their fees have been properly recorded, "thereby reducing the burden on our fee payment verification process."^{15/} This proposal also shows the Commission's failure to recognize the differences in overseeing competitive, rather than monopoly, industries.

In a monopoly environment the Commission's proposal would be unobjectionable because publishing customer and/or revenue information would neither benefit nor harm either the company furnishing the information or other entities. In a competitive environment, however, customer and/or revenue information is competitively sensitive and can provide a

^{12/} PCIA Comments at 6.

^{13/} *Order* at ¶ 14.

^{14/} *Further Notice* at ¶ 6.

^{15/} *Id.*

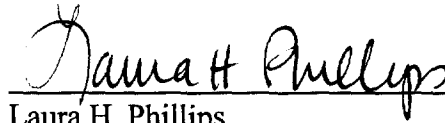
company's competitors with important market information about other industry players. While it is true that customer and/or revenue information is often released by competitive companies in various securities and other filings, the release, timing and format of such information is usually left to the company's, not the government's, discretion. The Commission should not publish potentially sensitive competitive information to reduce its own regulatory "burden." The proposal to print lists of fee paying entities and the fees paid should be rejected in favor of direct notifications.

In this new era of competition and opening markets, the Commission must adjust its regulatory philosophy to include the notion that many carriers under the Commission's jurisdiction do not operate in monopoly markets and cannot summarily collect new assessments from or pass on the costs of new mandates onto end users. The monopoly-minded ways of the past must be replaced by a new thinking that considers the competitive effects of Commission actions. As the FY 1997 regulatory fee schedule will introduce market distortions into the CMRS industry, the Commission must reconsider the *Order* in keeping with this petition. Further, the Commission must adopt a competitive outlook for all proposals dealing with the

CMRS and other competitive industries, and should therefore reject the proposal to publish lists of fee paying entities annually in the *Federal Register*.

Respectfully submitted,

COMCAST CELLULAR COMMUNICATIONS, INC.

A handwritten signature in cursive script, appearing to read "Laura H. Phillips", is written over a horizontal line.

Laura H. Phillips
Christina H. Burrow

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

August 11, 1997